

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:07od-151

OAHU

Grant of Term, Non-Exclusive Easement to Walter K. Quan, Andrew K. Quan,
Thomas A. Quan for Filled Land, Steps and Seawall Purposes, Kahaluu,
Koolaupoko, Oahu, Tax Map Key: (1) 4-7-010:036 seaward.

APPLICANT:

Walter K. Quan, unmarried; Andrew K. Quan, married; and Thomas A. Quan, married,
Joint Tenants, whose mailing address is 47-018 Lihikai Drive, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13 and -53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahaluu, Koolaupoko, Oahu, identified
by Tax Map Key: (1) 4-7-010:036, as shown on the attached map labeled Exhibit A.

AREA:

545 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing filled land, steps, and seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

During the shoreline certification process, an encroachment comprised of filled land, steps, and seawall was shown on the survey map attached as Exhibit B.

Office of Conservation and Coastal lands (OCCL) reviewed the material provided by the owner and determined that the subject encroachment was constructed before the establishment of the conservation district in 1964. Further, OCCL has agreed that allowing the encroachment to remain through the issuance of an easement would have no adverse impacts on natural resources, including beach resources. Therefore, OCCL has no objections to an easement request being processed. A copy of OCCL's letter is attached as Exhibit C.

Office of Hawaiian Affairs, Department of Facility Maintenance, Department of Planning and Permitting, Department of Hawaiian Home Lands, Commission on Water Resource Management have no comments/no objections to this request. Department of Health, Division of Aquatic Resources-DLNR, Historic Preservation Division-DLNR, and Board of Water Supply have not submitted any response as of the suspense date.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

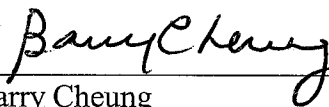
There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-7-010:036, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Walter K. Quan, Andrew K. Quan, and Thomas A. Quan covering the subject area for filled land, steps and seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;

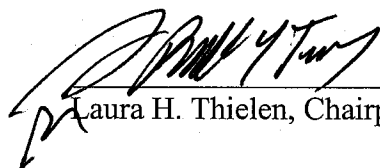
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-7-010:036, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



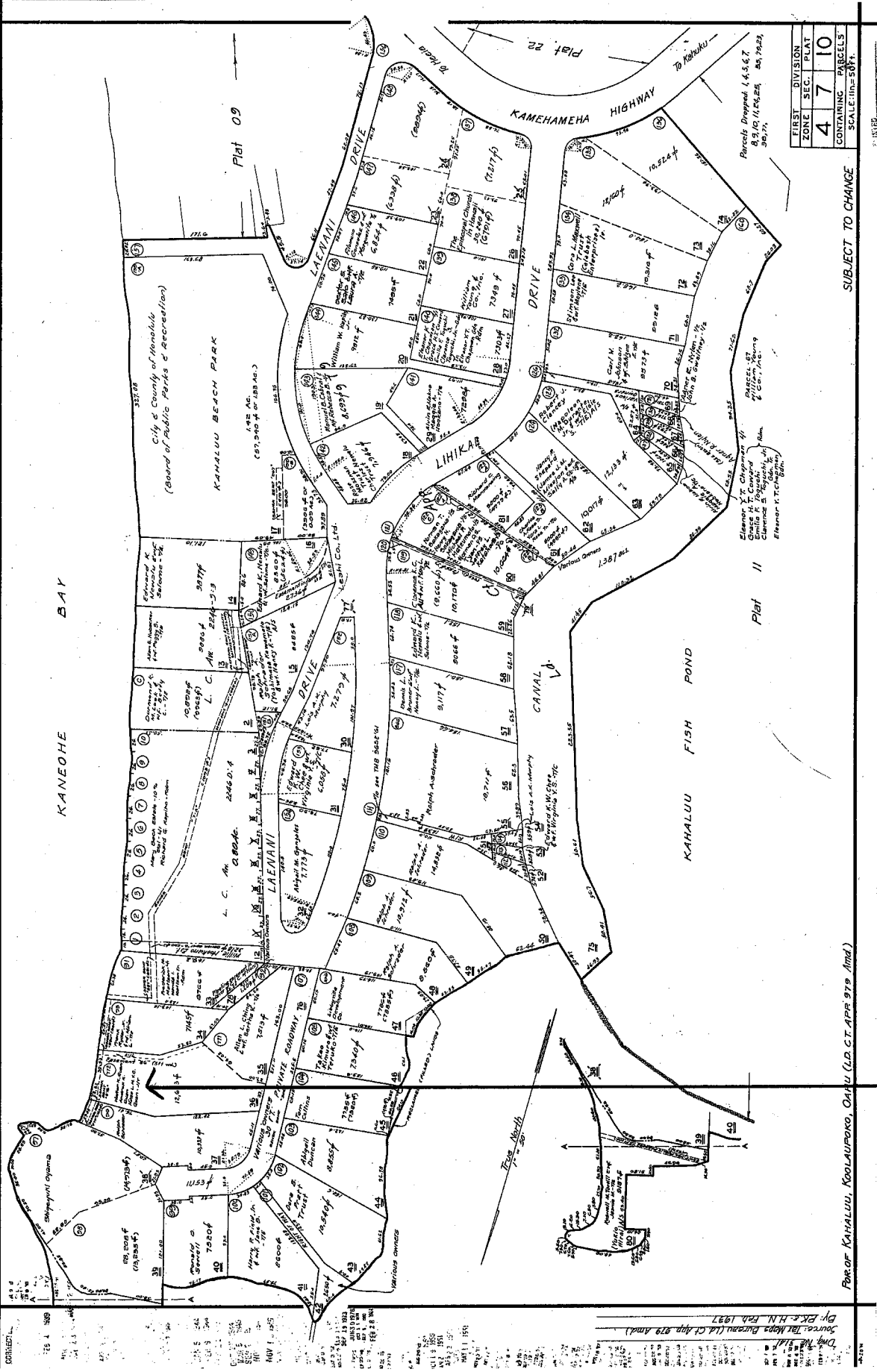
Barry Cheung
Land Agent

APPROVED FOR SUBMITTAL:



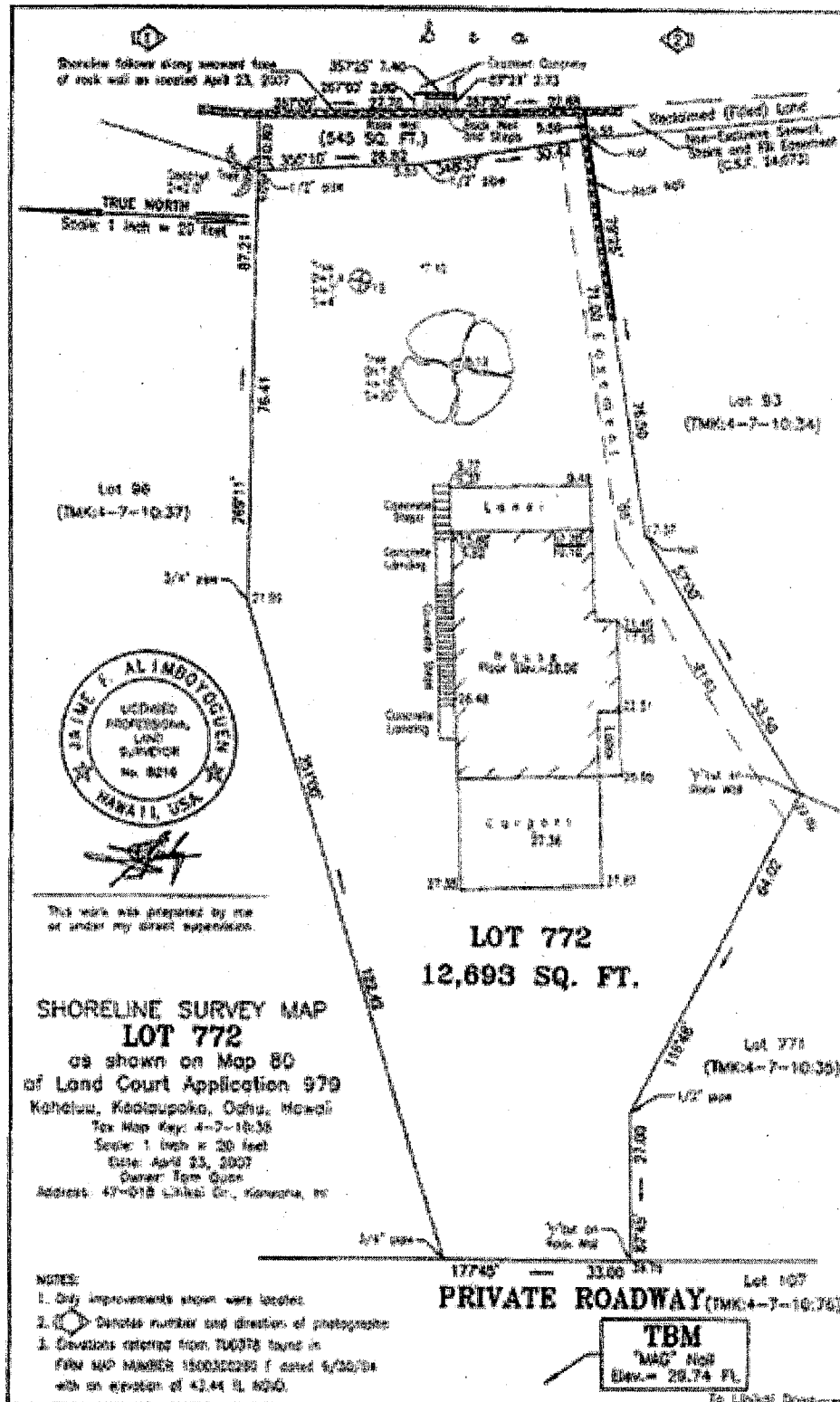
Laura H. Thielen, Chairperson





Subject Location

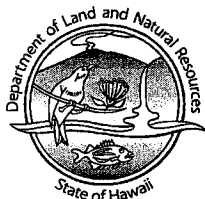
Figure 1 Survey Map



Shoreline Easement

TMK: (1) 4-7-10:36.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
2007 OCT 1 10 23

REF:OCCL:DE

October 1, 2007

Encroachment: OA-08-04

Mr. Thomas Quan,
47-018 Lihikai Dr.
Kaneohe, HI 96744

Dear Mr. Quan:

Subject: Shoreline Encroachment (fill and seawall), 47-018 Lihikai Dr. Kaneohe, Hawaii, TMK: (1) 4-7-10:36

The Office of Conservation and Coastal Lands (OCCL) staff has reviewed the submitted documentation and researched dated aerial photos for this case. The encroachment in question is a CRM seawall and filled land, located Makai of your property line. According to the submitted survey map by Jaime F. Alimoyoguen dated April 23, 2007 the total area of the encroachment is approximately 545 square feet (Figure 1).

An aerial photograph dated 1967 submitted by you to our office reveals the presence of what appears to be the subject improvements and the subject wall appears to be unaltered based on this photograph. It is unknown when the wall was constructed but since the subject seawall appears completely constructed with mature coconut trees and landscaping in place in the 1967 aerial photograph it is presumed the subject seawall and fill was constructed well before then and before the establishment of the conservation district in 1964.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;

EXHIBIT "C"

4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of OCCL staff. Based on the information provided the Department has made the following determinations with regard to the subject improvements:

Surrounding Land Uses:

The surrounding uses are residential with landscaped yards and residences in the surrounding parcels.

Beach Resources:

The intertidal area is sandy with a wet beach and intertidal mudflats and rocks further offshore. The shoreline here is composed of filled lands from historically dredged material with little to no recreational sand resources. The area is subject to tidal forces and is not an open coastline with typical wave action. Water quality is fair to poor due to non-point source pollution and soil runoff. Recreational activity is severely limited due to limited access, water quality and shallow rocky geography.

Public Access:

There is no public access to the shoreline at the subject property. The subject improvements do not reduce (or enhance) public access to the water fronting the parcel and thus are negligible.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment would have negligible benefit to public shoreline access. Public recreation such as fishing, diving and boating takes place offshore of the parcel with little to no recreational shoreline activities. The subject improvements appear to have no significant impact on the shoreline resources and provide improved access for the landowner to the ocean.

Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachment(s).

Affect on Adjacent Properties: The removal of the seawall may lead to increased coastal erosion and may eventually threaten the owners as well as neighboring properties and dwellings by flanking erosion.

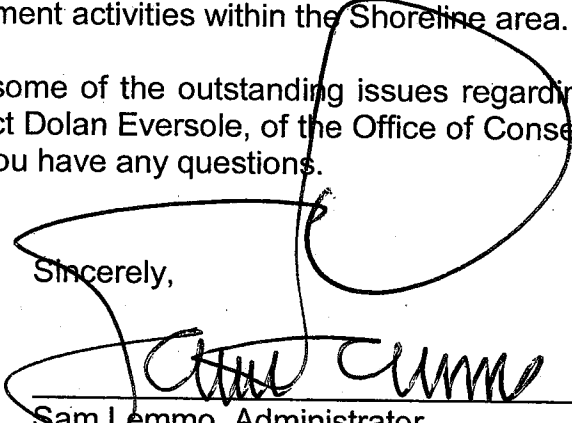
Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachments to remain through the issuance of an easement for the improvements would have no adverse impacts on natural resources, including beach resources. **Therefore, the OCCL has no objections to an easement request being processed.**

Pursuant to Chapter 171, you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

Please contact the State of Hawaii, DLNR, Land Division at (808) 587-0419 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment. For regulatory purposes, you should also contact the City and County Department of Planning and Permitting for any future development or improvement activities within the Shoreline area.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Dolan Eversole, of the Office of Conservation and Coastal Lands at 587-0321 if you have any questions.

Sincerely,



Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Chairperson's Office
Oahu Board Member
Land Division